



## **DEPARTMENT OF VETERANS AFFAIRS**

### **Privacy Act of 1974; System of Records**

**AGENCY:** Office of Inspector General (OIG), Department of Veterans Affairs (VA).

**ACTION:** Notice of modified system of records.

**SUMMARY:** As required by the Privacy Act of 1974, notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records known as "Criminal Investigations" (11VA51) by amending the Routine Uses and the Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records within the System. VA is republishing the system notice in its entirety.

**DATES:** Comments on this modified system of records must be received no later than 30 days after date of publication in the Federal Register. If no public comment is received during the period allowed for comment or unless otherwise published in the Federal Register by VA, the modified system of records will become effective a minimum of 30 days after date of publication in the Federal Register. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary.

**ADDRESSES:** Written comments may be submitted through **[www.Regulations.gov](https://www.Regulations.gov)**; by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Ave. NW, Room 1064, Washington, DC 20420; or by fax to (202) 273-9026 (not a toll-free number). Comments should indicate that they are submitted in response to Inspector General Hotline (Complaint Center) Records (66VA53). Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of

8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, comments may be viewed online at **www.Regulations.gov**.

**FOR FURTHER INFORMATION CONTACT:** Christopher Connor, Chief, Information Release Office (50CI), Office of Inspector General, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202-461-4269; or fax comments to (202) 495-5859. Amy L. Rose, VA Privacy Service, Office of Information Security (OIS), Office of Information and Technology (OIT), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 632-7497.

**SUPPLEMENTARY INFORMATION:** This publication is in accordance with the Privacy Act requirement that agencies publish their amended system of records in the Federal Register when there is revision, change, or addition. The VA Office of Inspector General (OIG) has reviewed its system of records notices and has determined its record system, "Criminal Investigations" (11VA51), should be amended to reflect evolving technology and procedures, to conform to current practice, and to reflect current authorities. The Routine Uses are amended to conform to changes recommended by OMB. The storage practices section will now reflect that data is stored in VA OIG's new Enterprise Management System (EMS) database in addition to the legacy Master Case Index (MCI) database.

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of

Veterans Affairs. André Horton, Deputy Chief Information Security Officer, Department of Veterans Affairs approved this document on January 8, 2019 for publication.

Dated: April 12, 2019.

**Amy L. Rose,**

*Program Analyst,*

*VA Privacy Service,*

*Department of Veterans Affairs.*

**11VA51**

**SYSTEM NAME:**

Criminal Investigations (11VA51).

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Department of Veterans Affairs (VA), Office of Inspector General (OIG), Office of Assistant Inspector General for Management and Administration (53), 810 Vermont Avenue NW, Washington, DC 20420.

**SYSTEM MANAGER(S):**

Assistant Inspector General for Management and Administration (53), Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-4760, VAOIG.ChiefInformationOfficer@va.gov

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Inspector General Act of 1978, Public Law (P.L.) 95-452, 5 U.S.C. App., as amended through P.L. 115-254 (IG Act).

**PURPOSE(S) OF THE SYSTEM:**

The purpose of this system of records is to compile evidence to prove or disprove criminal conduct, identify individual criminal offenders and alleged offenders, and identify witnesses and documents relevant to the investigation of the allegations. The records and information in the system are used in federal and state grand jury proceedings, pre-trial negotiations, plea agreements, pre-trial diversions, court hearings and trials. The records and information in the system may also be used in administrative proceedings when administrative action is taken against the subject of the investigation. VA OIG is modifying the system of records to give notice of changes to the system location and system manager, and to reflect amendments to the authority under which the system of records is maintained.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The following categories of individuals will be covered by the system: (1) employees, (2) veterans and other VA beneficiaries, and (3) private citizens, such as contractors, who conduct official business with the VA, or private citizens whose actions affect or relate to the programs and operations of VA. The individuals who are or have been the subjects of investigations are those alleged to have violated criminal laws, either federal or state, either in the performance of their official duties or related to the programs and operations of VA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records and information in this system include reports of criminal investigations of the VA OIG, Office of Investigations. These reports may include (1) a narrative summary or synopsis, (2) allegations of specific wrongdoing or crimes committed, (3) progress reports, (4) exhibits or attachments to the reports, (5) internal documentation and memoranda, and (6) affidavits or sworn statements. The name of the subject of an investigation, his or her title, his or her date of birth, his or her social security number, his or her home address, the station at which an investigation took place, the OIG's case number, the time period the investigation took place, and the outcome of the case are maintained in an electronic database and in hard copy files.

#### **RECORD SOURCE CATEGORIES:**

Information is obtained from VA employees, third parties (e.g., a veteran, VA beneficiary, VA contractor, or private party), the Government Accountability Office, VA records, congressional, federal, state, and local offices or agencies.

#### **ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Congress: VA may disclose information from the record of an individual in response to an inquiry from a congressional office made at the request of that individual.

VA must be able to provide information about individuals to adequately respond to inquiries from Members of Congress at the request of constituents who have sought their assistance.

2. Data breach response and remedial efforts: VA may, on its own initiative, disclose information from this system to appropriate agencies, entities, and persons when (1) VA

suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of embarrassment or harm to the reputations of the record subjects, harm to economic or property interests, identity theft or fraud, or harm to the security, confidentiality, or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

This routine use permits disclosures by the Department to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724.

a. Effective Response. A federal agency's ability to respond quickly and effectively in the event of a breach of federal data is critical to its efforts to prevent or minimize any consequent harm. An effective response necessitates disclosure of information regarding the breach to those individuals affected by it, as well as to persons and entities in a position to cooperate, either by assisting in notification to affected individuals or playing a role in preventing or minimizing harms from the breach.

b. Disclosure of Information. Often, the information to be disclosed to such persons and entities is maintained by federal agencies and is subject to the Privacy Act (5 U.S.C. § 552a). The Privacy Act prohibits the disclosure of any record in a system of records by any means of communication to any person or agency absent the written

consent of the subject individual, unless the disclosure falls within one of twelve statutory exceptions. In order to ensure an agency is in the best position to respond in a timely and effective manner, in accordance with 5 U.S.C. § 552a(b)(3) of the Privacy Act, agencies should publish a routine use for appropriate systems specifically applying to the disclosure of information in connection with response and remedial efforts in the event of a data breach.

c. Data breach response and remedial efforts with another Federal agency  
VA may, on its own initiative, disclose information from this system to another Federal agency or Federal entity, when VA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

3. Law Enforcement: VA may, on its own initiative, disclose information in this system which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a federal, state, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a federal agency charged with the responsibility of investigating

or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

VA must be able to provide on its own initiative information that pertains to a violation of laws to law enforcement authorities to enable authorities to investigate and enforce those laws. Under 38 U.S.C. § 5701(a) and (f), VA may disclose the names and addresses of veterans and their dependents to federal entities with law enforcement responsibilities. This is distinct from the authority to disclose records in response to a qualifying request from a law enforcement entity, as authorized by Privacy Act subsection 5 U.S.C. § 552a(b)(7).

4. Litigation: VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its own initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of the records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

To determine whether to disclose records under this routine use, VA will comply with the guidance promulgated by the Office of Management and Budget in a May 24,



1985, memorandum entitled "Privacy Act Guidance—Update," currently posted at <http://www.whitehouse.gov/omb/inforeg/guidance1985.pdf>.

VA must be able to provide information to DoJ in litigation where the United States or any of its components is involved or has an interest. A determination would be made in each instance that under the circumstances involved, the purpose is compatible with the purpose for which VA collected the information. This routine use is distinct from the authority to disclose records in response to a court order under subsection (b)(11) of the Privacy Act, 5 U.S.C. § 552(b)(11), or any other provision of subsection (b), in accordance with the court's analysis in Doe v. DiGenova, 779 F.2d 74, 78-85 (D.C. Cir. 1985) and Doe v. Stephens, 851 F.2d 1457, 1465-67 (D.C. Cir. 1988).

5. Contractors: VA may disclose information from this system of records to individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor, subcontractor, public or private agency, or other entity or individual with whom VA has a contract or agreement to perform services under the contract or agreement.

This routine use includes disclosures by an individual or entity performing services for VA to any secondary entity or individual to perform an activity that is necessary for individuals, organizations, private or public agencies, or other entities or individuals with whom VA has a contract or agreement to provide the service to VA.

This routine use, which also applies to agreements that do not qualify as contracts defined by federal procurement laws and regulations, is consistent with OMB guidance in OMB Circular A-130, App. I, paragraph 5a(1)(b) that agencies promulgate

routine uses to address disclosure of Privacy Act-protected information to contractors to enable them to perform the services and contracts for the agency.

6. Equal Employment Opportunity Commission (EEOC): VA may disclose information from this system to the EEOC when requested in connection with investigations of alleged or possible discriminatory practices, examination of federal affirmative employment programs, or other functions of the Commission as authorized by law or regulation.

VA must be able to provide information to EEOC to assist it in fulfilling its duties to protect employees' rights, as required by statute and regulation.

7. Federal Labor Relations Authority (FLRA): VA may disclose information from this system to the FLRA, including its General Counsel, information related to the establishment of jurisdiction, investigation, and resolution of allegations of unfair labor practices, or in connection with the resolution of exceptions to arbitration awards when a question of material fact is raised; for it to address matters properly before the Federal Services Impasses Panel, investigate representation petitions, and conduct or supervise representation elections.

VA must be able to provide information to FLRA to comply with the statutory mandate under which it operates.

8. Merit Systems Protection Board (MSPB): VA may disclose information from this system to the MSPB, or the Office of the Special Counsel, when requested in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigation of alleged or possible prohibited personnel

practices, and such other functions promulgated in 5 U.S.C. 1205 and 1206, or as authorized by law.

VA must be able to provide information to MSPB to assist it in fulfilling its duties as required by statute and regulation.

9. National Archives and Records Administration (NARA) and General Services Administration (GSA): VA may disclose information from this system to NARA and GSA in records management inspections conducted under title 44, U.S.C.

NARA is responsible for archiving old records which are no longer actively used but may be appropriate for preservation, and for the physical maintenance of the Federal government's records. VA must be able to provide the records to NARA in order to determine the proper disposition of such records.

10. The agency may disclose any information in this system, except the name and address of a veteran, to a federal, state, or local agency maintaining civil or criminal violation records or other pertinent information such as prior employment history, prior federal employment background investigations, and/or personal or educational background in order for VA to obtain information relevant to the hiring, transfer, or retention of an employee, the letting of a contract, the granting of a security clearance, or the issuance of a grant or other benefit. The name and address of a veteran may be disclosed to a federal agency under this routine use if this information has been requested by the federal agency to respond to the VA inquiry.

11. To assist attorneys in representing their clients, the agency may disclose any information in this system to attorneys representing subjects of investigations, including veterans, federal government employees, retirees, volunteers, contractors,

subcontractors, or private citizens, except where VA has decided release is inappropriate under Title 5, United States Code, Section 552a(j) and (k).

12. Any information in this system of records may be disclosed, in the course of presenting evidence to a court, magistrate, administrative tribunal, or grand jury, including disclosures to opposing counsel in the course of such proceedings or in settlement negotiations.

13. The agency may disclose any information in this system to any source or person, either private or governmental, to the extent necessary to secure from such source or person information relevant to, and sought in furtherance of, an investigation, review, or inspection.

14. The agency may disclose any information in this system, except the name and address of a veteran, to federal, state, or local professional, regulatory, or disciplinary organizations or associations, including but not limited to bar associations, state licensing boards, and similar professional entities, for use in disciplinary proceedings and inquiries preparatory thereto, where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person employed by VA or a person representing a person in a matter before VA. The name and address of a veteran may be disclosed to a federal agency under this routine use if this information has been requested by the federal agency to enable it to respond to the VA inquiry.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING,  
RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Records and information are stored electronically in the VA OIG's new EMS (Enterprise Management System) or legacy MCI (Master Case Index) databases and servers at the

VA OIG's office at 801 I Street NW, Washington, DC 20420, in the office of the VA OIG's Information Technology Division. Backup records are stored on magnetic disc, tape and CD-ROM and may also be retained in hard copy format in secure file folders. The VA OIG Office of Investigations, Hotline Division is responsible for electronically inputting records and information received from complainants, referrals and correspondence related to the initiation of a case, and final reports. Information inputted electronically includes all correspondence to and from complainants, correspondence (including e-mail messages) to and among VA OIG organizational elements about complaints, and correspondence to and from any VA component to which a case was referred. Complaints and information about VA employees, including all investigative reports and work papers, are maintained in electronic files with restricted access limited to those with a need to know for their the official duties, including personnel in the VA OIG Office of Investigations, VA OIG Human Resources Management Division, VA OIG attorneys, and VA OIG management officials responsible for supervising any VA OIG employee who is the subject of an internal investigation. Hard copies of records and information are discussed in the storage section below.

**STORAGE:**

Hard copies of documents and information are maintained by the OIG organization that conducts the review, inspection, or investigation. For example, the Administrative Investigations Division, at VA OIG headquarters, maintains hard copies of an investigative file which contains a case referral from Hotline, the final report, all documentation supporting the final report, draft reports, correspondence, and all information collected as part of the investigation. Similarly, the VA OIG Office of

Healthcare Inspections (OHI) maintains hard copies of its investigations (final reports and supporting documentation). Other records and information (i.e., work papers) about investigations related to individuals compiled by OHI are maintained in the OHI field office that conducted the investigation. Any internal VA OIG investigations on VA OIG employees, conducted prior to the implementation of electronic files, are maintained in hard copy only and are secured in the Office of Investigations, Analysis and Oversight Division (51X). Access to those files is highly restricted.

#### **RETRIEVABILITY:**

Information and records are retrieved by EMS or MCI case number and the name of the subject of the investigation. Scanned documents, reports and other uploaded information that are made part of the electronic file cannot be searched or retrieved from the EMS or MCI databases as part of a general search.

#### **SAFEGUARDS:**

Information in the system is protected from unauthorized access through administrative, physical, and technical safeguards. Access to the hard copy and computerized information is restricted to authorized OIG personnel on a need-to-know basis. Hard copy records are maintained in offices that are restricted during work hours or are locked after duty hours. The headquarters building is protected by security guards and access is restricted during non-duty hours. Access to the computerized information is limited to VA OIG employees by means of passwords and authorized user identification codes. Computer system documentation is maintained in a secure environment in the Office of Inspector General, VA Central Office.

**RETENTION AND DISPOSAL:**

Records will be maintained and disposed of in accordance with a records disposition authority approved by the Archivist of the United States.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Inspector General for Management and Administration (53), Department of Veterans Affairs, Office of Inspector General, 810 Vermont Avenue NW, Washington, DC 20420.

**NOTIFICATION PROCEDURE:**

An individual who wishes to determine whether a record is being maintained by the Assistant Inspector General for Investigations, under his or her name in this system or wishes to determine the contents of such records should submit a written request to the Assistant Inspector General for Management and Administration (53). However, a majority of records in this system are exempt from the notification requirements under 5 U.S.C. 552a (j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to notification. A determination as to whether an exemption applies shall be made at the time a request for notification is received.

**RECORD ACCESS PROCEDURES:**

An individual who seeks access to or wishes to contest records maintained under his or her name in this system must submit a written request to the Chief, Information Release Office (50CI). However, a majority of records in this system are exempt from the records access and contesting requirements under 5 U.S.C. 552a (j) and (k). To the extent that records in this system of records are not subject to exemption, they are subject to

access and contest. A determination as to whether an exemption applies shall be made at the time a request for access or contest is received.

#### **CONTESTING RECORD PROCEDURES:**

(See records access procedures above.)

#### **RECORD SOURCE CATEGORIES:**

Information is obtained from VA employees, third parties (e.g., a veteran, VA beneficiary, VA contractor, or private party), the Government Accountability Office, Department of Veterans Affairs records, congressional, federal, state, and local offices or agencies.

#### **SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Under 5 U.S.C. 552a(j)(2), the head of any agency may exempt any system of records within the agency from certain provisions of the Privacy Act, if the agency or component that maintains the system performs as its principal function any activities pertaining to the enforcement of criminal laws. The Inspector General Act of 1978, Public Law 95–452 (IG Act), as amended, mandates that the Inspector General recommend policies for and to conduct, supervise, and coordinate activities in the Department of Veterans Affairs and between VA and other Federal, State and local governmental agencies with respect to: (1) The prevention and detection of fraud in programs and operations administered or financed by VA and (2) the identification and prosecution of participants in such fraud. Under the IG Act, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General. This system of records has been created in major part to support the criminal law-related activities



assigned by the Inspector General to the Assistant Inspector General for Investigations.

These activities constitute a principal function of the Inspector General's Hotline/Complaint Center staff. In addition to principal functions pertaining to the enforcement of criminal laws, the Inspector General may receive and investigate complaints and allegations from various sources concerning the possible existence of activities constituting non-criminal violations of law, rules or regulations; mismanagement; gross waste of funds; abuses of authority or substantial and specific danger to the public health and safety. This system of records also exists to support inquiries by the Assistant Inspectors General for Auditing, for Management and Administration, for Administrative Investigations, and for Healthcare Inspections into non-criminal matters. Based upon the foregoing, the Secretary of Veterans Affairs has exempted this system of records, to the extent that it encompasses information pertaining to criminal law-related activities, from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(j)(2): 5 U.S.C. 552a(c) (3) and (4); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e) (1), (2) and (3); 5 U.S.C. 552a(e)(4) (G), and (H) and (I); 5 U.S.C. 552a(e) (5) and (8); 5 U.S.C. 552a(f); 5 U.S.C. 552a(g).

The Secretary of Veterans Affairs has also exempted this system of records to the extent that it does not encompass information pertaining to criminal law related activities under 5 U.S.C. 552a(j)(2) from the following provisions of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d); 5 U.S.C. 552a(e)(1); 5 U.S.C. 552a(e)(4) (G), (H) and (I); 5 U.S.C. 552a(f).

#### **REASONS FOR EXEMPTIONS:**

The exemption of information and material in this system of records is necessary in order to accomplish the law enforcement functions of the Office of Inspector General, e.g., to prevent subjects of investigations from frustrating the investigatory process by discovering the scope and progress of an investigation, to prevent the disclosure of investigative techniques, to fulfill commitments made to protect the confidentiality of sources, to maintain access to sources of information and to avoid endangering these sources and law enforcement personnel.

**HISTORY:**

[See the last full Federal Register notice, 73 FR 46708, Aug. 11, 2008].

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